

Section-by-Section Analysis of the Labor Recruiter Accountability Act

Section 1. Short Title: “Labor Recruiter Accountability Act of 2003.”

Section 2. Protections for Workers Recruited Abroad.

Subsection 2(a) requires employers and foreign labor contractors to inform workers about the terms and conditions of their employment at the time they are recruited and prohibits workers from being charged for certain costs.

Specifically, workers must be informed of the place of employment; their compensation; a description of employment activities; the period of employment; transportation, housing or other employee benefits that may be provided and any charges for those benefits; the existence of any strike, lockout, or organizing effort at the place of employment; the extent to which workers may be compensated for injuries through workers’ compensation or other means; any education or training to be provided and its costs; and a statement of the worker’s rights under this Act. The information provided must be accurate, in writing, and, to the extent reasonable, in the language of the worker being recruited.

Employers and recruiters are prohibited from requiring or requesting recruitment fees from workers. Employers are required to pay the costs, including subsistence costs, of transporting the worker.

Subsection 2(b) provides for the regulation of foreign labor contractors. Employers are required to notify the Secretary of Labor of the identity of foreign labor contractors that they employ and are jointly liable for violations of this Act committed such contractors. Employers are also required to notify the Secretary of the identity of foreign contractors who violate this statute.

The Secretary is required to maintain a public list of foreign labor contractors who have been involved in violations of the Act. The Secretary shall provide procedures by which a contractors name may be removed from the list by demonstrating that the contractor has not violated this Act in the previous five years. Section 3 provides that employers may be subject to additional penalties if they use a contractor listed by the Secretary as having been involved in previous violations of this Act and that contractor contributes to a violation for which the employer may be liable. It is a violation of this Act for a contractor to violate without justification a contract with an employer.

Subsection 2(c) prohibits discrimination against any a worker because the worker has filed a complaint, has instituted or caused to be instituted any proceedings, has or will testify in any proceedings, or has exercised any right afforded by this Act.

Section 3. Enforcement Provisions.

Subsection 3(a) provides criminal sanctions providing that knowing violations may be subject to fines and/or imprisonment of up to one year and that subsequent violations may result in fines and/or imprisonment of up to three years.

Subsection 3(b) provides for administrative penalties including civil penalty of not more than \$5,000 for violations of this Act. In determining the amount of the penalty the Secretary is directed to take into account the person's record of compliance with the Fair Labor Standards Act of 1938 and the gravity of the violation. If the employer uses the services of a contractor on the Secretary's list of contractors who have violated the act, and that contractor contributes to a violation for the which employer is also liable, the employer may be additionally fined \$10,000 per violation.

Subsection 3(c) authorizes the Secretary to seek injunctive relief and take other actions to assure employer compliance with terms and conditions of employment under this Act and with this Act as necessary.

Subsection 3(d) provides that employees may not waive their rights under this Act.

Subsection 3(e) authorizes the Solicitor of Labor to represent the Secretary of Labor in civil litigation brought under this Act, other than before the U.S. Supreme Court, subject to the direction of the Attorney General.

Section 4. Procedures in Addition to Other Rights of Employees.

Section 4 provides that the rights and remedies provided to workers under this Act are in addition to, and not in lieu of, any other contractual or statutory rights.

Section 5. Authority to Prescribe Regulations.

Section 5 authorizes the Secretary of Labor to prescribe regulations as may be necessary to carry out this Act.

Section 6. Definitions.

Sections 6 defines the terms used in this Act as generally having the same definitions as provided in section 3 of the Fair Labor Standards Act of 1938. "Foreign labor contractor" is defined to mean any person who performs foreign labor contracting activity for compensation. "Foreign labor contracting activity" means recruiting, soliciting, hiring, employing, or furnishing an individual who resides outside of the United States to be employed in the United States. "United States" is defined to include the District of Columbia, Puerto Rico, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, and the Virgin Islands of the United States. Other specifically defined terms include "State," "Secretary," and "worker."